

INFORMATION SHEET
DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS
RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK
COUNTY V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE: Walla Walla District

FILE NUMBER: NWW No. 052600019

REGULATORY PROJECT MANAGER: Eric M. Gerke **Date:** January 10, 2005

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** Y **Date:** _____
At the project site (Y/N) N **Date:** _____

PROJECT LOCATION INFORMATION:

State: Idaho

County: Blaine

Center coordinates of site by latitude & longitudinal coordinates: Zone:11 North:4800458 East:733140

Approximate size of site/property (including uplands & in acres): 146

Name of waterway or watershed: wetlands adjacent to Silver Creek

SITE CONDITIONS:

Type of aquatic resource ¹	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake									
River									
Stream									
Dry Wash									
Mudflat									
Sandflat									
Wetlands			X						
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹ :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?	X				
Is or would be used as habitat by other migratory birds that cross state lines?	X				
Is or would be used as habitat for endangered species?		X			
Is used to irrigate crops sold in interstate commerce?		X			

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary _____ Or Approved X

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite):

Non-jurisdictional wetlands were surveyed and identified on attached maps, as NJ 1 through 8. These wetlands were created artificially as a result of stormwater runoff from US 20 and/or flood irrigation practices. Approximately, 1.05 acres of non-jurisdictional palustrine emergent wetland and 2.80 acres of non-jurisdictional palustrine scrub-shrub wetland are located within the delineated area. These wetlands appear not to have a hydraulic connection to Silver Creek and/or other waters of United States. NJ 1 through 8 are not boatable. Migratory birds probably use these wetlands; however, there is no other evidence of their use in interstate commerce. Based on the Solid Waste Agency of Northern Cook County v. US Army Corps of Engineers, 531 US 159 (2001), isolated, non-navigable intrastate waters are not jurisdictional under the Clean Water Act, if the sole interstate commerce nexus is the use of such waters by migratory birds or other factors in the Migratory Bird Rule. Therefore, NJ 1 through 8 are not considered waters of the United States.

Unnamed drainages to Silver Creek (ponds, roadside ditches and irrigation canals) and Silver Creek are Category (5) tributaries because Silver Creek flows into the Malad River, which flows into the Snake River, which is a Category (2) interstate waterway. In *Headwaters Inc. v. Talent Irrigation District*, 243 F.3d 526 (9th Cir. 2001), the court held that canals, ditches, and drains that are capable of carrying pollutants to navigable waters are jurisdictional as tributaries under the Clean Water Act. Northwestern Division of the US Army Corps of Engineers views that court case as binding in the geographical jurisdiction of the US Court of Appeals for the Ninth Circuit, which includes Idaho.

Jurisdictional wetlands were surveyed and are depicted on the attached wetland maps as J1 through J12. Approximately, 5.80 acres of jurisdictional palustrine emergent wetland and 2.95 acres of jurisdictional scrub shrub wetlands were identified as hydrologically contiguous to Silver Creek, and therefore they are adjacent to Silver Creek as Category (7) wetlands.